



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 17, 1997

Ms. Cynthia Figueroa Calhoun
The Ronquillo Law Firm
Harwood Center
1999 Bryan Street, Suite 3450
Dallas, Texas 75201

OR97-2500

Dear Ms. Calhoun:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Texas Open Records Act. Your request was assigned ID# 110058.

The Dallas Independent School District (the "district"), which you represent, received a request for "a list of all individuals including their race that have been terminated since Dr. Yvonne Gonzalez has taken office. [W]e also request that you include the reason for these individual's termination." You contend the information is subject to exception under sections 552.305, 552.101 and 552.102 of the Government Code. We have reviewed the documents submitted.

Initially, you express concern that the request for information is overly burdensome and that you cannot determine with specificity the documents sought by the requestor. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of

information available so that he may properly narrow his request.
Open Records Decision No. 31 (1974).

In response to the request at issue here, the district must make a good-faith effort to relate the request to information in the district's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8. In this case, you do not indicate whether you have asked the requestor to clarify his request for information but that notwithstanding, you have submitted the documents for review. You, therefore, seek a ruling on those documents you believe fall within the scope of the request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if:

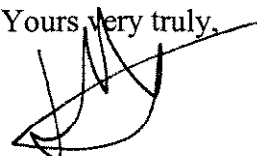
- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also*, Open Records Decision Nos. 470 (1987) (holding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (holding that kinds of prescription drugs a person is taking are protected by common-law privacy), 343 (1982) (holding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). The public has a legitimate interest in the reasons for a public employee's dismissal, demotion, promotion or resignation. Open Records Decision Nos. 470 (1987), 467 (1987), 444 (1986), 405 (1983). Therefore, the requested information may not be withheld under common law privacy in conjunction with section 552.101.

We note that section 552.101 encompasses information protected by other statutes and that section 21.355 of the Education Code provides, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). This office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* However, based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the list submitted to this office for review does not evaluate the teachers or administrators as contemplated under the statute. Additionally, we note that under previous decisions we have determined that the public has a legitimate interest in knowing the reasons for the dismissal, demotion, promotion, or resignation of a public employee and indeed, this information is not excepted by section 552.102. Open Records Decision 444 (1986). Accordingly, you must release the requested list.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

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Ref: ID# 110058

Enclosures: Submitted documents

cc: Mr. Shawn Lane
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(w/o enclosures)